

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

| | | |
|----------------------------|---|----------------------|
| LANCE D. SHEPHERD, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Case No. 1:19-cv-314 |
| |) | |
| GREEN PLAINS BLUFFTON, LLC |) | |
| d/b/a GREEN PLAINS INC. |) | |
| |) | |
| Defendant. |) | |

NOTICE OF REMOVAL

Defendant Green Plains Inc.,¹ (“Green Plains”), pursuant to 28 U.S.C. §§ 1331, 1332, 1441 and 1446, hereby gives notice that it has removed the above-titled case from the Wells Superior Court of Wells County, Indiana to the United States District Court for the Northern District of Indiana. In support of its Notice, Green Plains states the following:

I. REMOVAL IS TIMELY

1. A civil action, denominated as *Lance D. Shepherd v. Green Plains Bluffton, LLC d/b/a Green Plains Inc.* (“Complaint”) was commenced in the Wells Superior Court in Wells County, Indiana. A copy of the summons and original Complaint is attached hereto as Exhibit A.

2. Green Plains was served with the Complaint on June 21, 2019.

3. Pursuant to 28 U.S.C. § 1446(b), this Notice of Removal is filed within 30 days after service of the Complaint on Green Plains and is, therefore, timely.

¹ Plaintiff improperly named Green Plains Bluffton LLC as the defendant in this matter. At all relevant times, Green Plains Inc. was Plaintiff’s employer, and is thus the proper defendant in this case.

II. FEDERAL QUESTION JURISDICTION EXISTS

4. This Court has original jurisdiction under 28 U.S.C. § 1331, and this case may be removed pursuant to 28 U.S.C. § 1441(a) because Plaintiff's claims arise, if at all, under the Americans with Disabilities Act of 1990, 42 U.S.C. § 12111 *et seq.* ("ADA") and the Family Medical Leave Act of 1990, 29 U.S.C. § 2601 *et seq.* ("FMLA"). *See* Exhibit A.

III. DIVERSITY JURISDICTION EXISTS

5. This Court also has original jurisdiction over this action under 28 U.S.C. § 1332(a), and this case may be removed pursuant to 28 U.S.C. § 1441(b), because (A) there is complete diversity of citizenship among the parties, and (B) the amount in controversy exceeds the sum of Seventy-Five Thousand Dollars (\$75,000.00), exclusive of interest and costs.

A. There Is Complete Diversity of Citizenship Among the Parties

6. Upon information and belief, Plaintiff Lance P. Shepherd is an individual domiciled in the State of Indiana. Therefore, for purposes of this Notice of Removal, Plaintiff is a citizen of the State of Indiana.

7. Defendant Green Plains is a corporation incorporated in the State of Iowa with its principal place of business in Omaha, Nebraska.²

8. There is complete diversity of citizenship because Plaintiff is a citizen of Indiana and Green Plains is a corporate citizen of Iowa and Nebraska. *See* 28 U.S.C. § 1332(a)(1) (stating that the court has diversity jurisdiction over citizens of different states).

² Green Plains Bluffton LLC, which was improperly named as a defendant in this matter, is a Delaware limited liability company, which does not have any Indiana members. In fact, the only member of Green Plains Bluffton LLC is Green Plains Processing LLC, which is also a Delaware limited liability company. The only member of Green Plains Processing LLC is Green Plains Inc. Thus, even if Green Plains Bluffton LLC was the proper defendant, which it is not, complete diversity would still exist between the parties.

B. The Amount in Controversy Requirement Is Satisfied

9. In his Complaint, Plaintiff states that he seeks compensatory damages for lost income, emotional distress, mental anguish, humiliation, embarrassment, and inconvenience. *See* Exhibit A. He also seeks liquidated damages, punitive damages, attorney's fees, and costs. *See id.* Thus, common sense dictates that Plaintiff's Complaint establishes that the amount in controversy exceeds \$75,000, exclusive of interest and costs.

10. Because there is complete diversity between the parties, and Plaintiff is seeking in excess of \$75,000 in monetary damages, this Court has diversity jurisdiction over Plaintiff's claims under 28 U.S.C. § 1332(a).

III. REMOVAL TO THIS DISTRICT IS PROPER

11. The United States District Court for the Northern District of Indiana, Fort Wayne Division, is the appropriate venue for removal of Plaintiff's state court action pursuant to 28 U.S.C. § 1441(a), which permits any civil action brought in any state court in which the District Courts of the United States have original jurisdiction to be removed to the District Court of the United States for the district and division embracing the place where the state court action is pending.

IV. GREEN PLAINS HAS COMPLIED WITH PROCEDURAL REQUIREMENTS

12. Upon filing this Notice of Removal, Green Plains will provide written notice to Plaintiff and file a copy of the Notice of Removal with the Clerk of the Wells Superior Court in Wells County, Indiana.

13. Green Plains reserves the right to amend or supplement this Notice of Removal.

14. By filing this Notice of Removal, Green Plains does not waive any defenses that may be available to it.

WHEREFORE, Defendant Green Plains Inc. gives notice that this action is removed from the Wells Superior Court of Wells County, Indiana to the United States District Court for the Northern District of Indiana for the exercise of jurisdiction over this action, as though this action had originally been instituted in this Court.

Respectfully submitted,

Dated: July 15, 2019

HUSCH BLACKWELL LLP

By: /s/ Lauren E. Waxler

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Attorneys for Defendant Green Plains Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing instrument was filed via the Court's CM/ECF System on this 15th day of July, 2019 and served electronically, via email, and via regular U.S. Mail upon:

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/s/ Lauren E. Waxler

Attorney for Defendant